

Objection Deadline: September 23, 2021
Hearing Date: To be set by Court, if necessary

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

In re:
THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,
as representative of
THE COMMONWEALTH OF PUERTO RICO, *et al.*,
Debtors.¹

In re:
THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,
as representative of
PUERTO RICO HIGHWAYS AND
TRANSPORTATION AUTHORITY,
Debtor.

AMERINATIONAL COMMUNITY SERVICES,
LLC, as Servicer for the GDB Debt Recovery
Authority and CANTOR-KATZ COLLATERAL
MONITOR LLC,

Plaintiffs,

v.

AMBAC ASSURANCE CORPORATION,
ASSURED GUARANTY CORP., ASSURED
GUARANTY MUNICIPAL CORP., NATIONAL
PUBLIC FINANCE GUARANTEE
CORPORATION, FINANCIAL GUARANTY
INSURANCE COMPANY, PEAJE INVESTMENTS

PROMESA
Title III
No. 17 BK 3283-LTS
(Jointly Administered)

PROMESA
Title III
No. 17 BK 3567-LTS

Adv. Proc. No. 21-00068-LTS

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico ("Commonwealth") (Bankruptcy Case No. 17-BK-3283- LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17- BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

LLC, and THE BANK OF NEW YORK MELLON,
as Fiscal Agent,

Defendants.

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,
as representative of PUERTO RICO HIGHWAYS
AND TRANSPORTATION AUTHORITY; THE
FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO as representative of
THE COMMONWEALTH OF PUERTO RICO,

Movants,

v.

AMERINATIONAL COMMUNITY SERVICES,
LLC, as Servicer for the GDB Debt Recovery
Authority and CANTOR-KATZ COLLATERAL
MONITOR LLC,

Respondents.

**NOTICE OF MOTION AND MOTION OF INTERVENING DEFENDANT
FINANCIAL OVERSIGHT AND MANAGEMENT BOARD TO DISMISS, OR IN THE
ALTERNATIVE, TO STAY COUNTS I, II, AND IV OF THE COMPLAINT**

PLEASE TAKE NOTICE THAT, pursuant to the *Order on Joint Status Report Pursuant to Court Order Dated July 16, 2021, [ECF No. 17387] with Respect to (I) DRA Parties Administrative Expense Claim Motion and (II) DRA Adversary Proceeding* [Case No. 17-3283, ECF No. 17529] (the “Status Report Order”), which directed the filing of a motion to dismiss or other dispositive motion regarding the DRA Parties’² *Adversary Complaint* [ECF No. 1] (the “Complaint”) by August 26, 2021, and Fed. R. Civ. P. 12(b)(1) and 12(b)(6), made applicable in this adversary proceeding by PROMESA § 310 and Fed. R. Bankr. P. 7012(b), Intervening Defendant the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as sole Title III representative of Debtors the Commonwealth of Puerto Rico and the Puerto Rico Highways And Transportation Authority pursuant to Section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),³ upon (i) this Notice of Motion and Motion (this “Motion”), and (ii) the *Intervening Defendant Financial Oversight and Management Board’s Memorandum of Law in Support of Motion to Dismiss, or in the Alternative, Stay Counts I, II, and IV of the Complaint* filed concurrently herewith, hereby moves to dismiss, or in the alternative, stay Counts I, II, and IV of the Complaint.⁴ A proposed order granting the Motion is attached and marked as **Exhibit A** hereto.

This Motion will be and is made upon the grounds that Counts I, II, and IV of the Complaint should be dismissed with prejudice pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6). Alternatively, Counts I, II, and IV should be stayed or terminated.

² The “DRA Parties” are AmeriNational Community Services, LLC, as servicer for the GDB Debt Recovery Authority (the “DRA”), and Cantor-Katz Collateral Monitor LLC, which serves as the collateral monitor for Wilmington Trust, N.A. in connection with the new bonds issued by the DRA.

³PROMESA has been codified in 48 U.S.C. §§ 2101-2241.

⁴ The Oversight Board has not intervened with respect to Count III of the Complaint.

Counsel for the Oversight Board and the DRA Parties have met and conferred, in writing and, together with counsel for intervening defendant the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”), telephonically, regarding the anticipated Motion and agree the meet-and-confer requirements have been satisfied. Despite the parties’ good faith efforts to resolve informally the issues raised by this Motion, the parties have not resolved the matters in controversy, necessitating the filing of the Motion.

Pursuant to the Status Report Order, (i) any opposition to the Motion must be filed by September 23, 2021, (ii) the Oversight Board shall file its reply by October 8, 2021, and (iii) the Court will thereafter take the Motion under submission (unless the Court determines a hearing is necessary). The relief requested in the Motion may be granted without hearing if no opposition is timely filed and served in accordance with the Court’s *Fifteenth Amended Notice, Case Management and Administrative Procedures* [Case No. 17-3283, ECF No. 17127-1].

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Dated: August 26, 2021
San Juan, Puerto Rico

Respectfully submitted,

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*Attorneys for the Financial Oversight and
Management Board, as representative for the
Debtors*

CERTIFICATE OF SERVICE

I hereby certify that, on August 26, 2021, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to all CM/ECF participants in this case.

/s/Hermann D. Bauer
Hermann D. Bauer

EXHIBIT A

Proposed Order

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

In re:
THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,
as representative of
THE COMMONWEALTH OF PUERTO RICO, *et al.*,
Debtors.⁵

PROMESA
Title III
No. 17 BK 3283-LTS
(Jointly Administered)

In re:
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MANAGEMENT BOARD FOR PUERTO RICO,
as representative of
PUERTO RICO HIGHWAYS AND
TRANSPORTATION AUTHORITY,
Debtor.

PROMESA
Title III
No. 17 BK 3567-LTS

AMERINATIONAL COMMUNITY SERVICES,
LLC, as Servicer for the GDB Debt Recovery
Authority and CANTOR-KATZ COLLATERAL
MONITOR LLC,

Adv. Proc. No. 21-00068-LTS

Plaintiffs,

v.

AMBAC ASSURANCE CORPORATION,
ASSURED GUARANTY CORP., ASSURED
GUARANTY MUNICIPAL CORP., NATIONAL
PUBLIC FINANCE GUARANTEE
CORPORATION, FINANCIAL GUARANTY
INSURANCE COMPANY, PEAJE INVESTMENTS

⁵ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico ("Commonwealth") (Bankruptcy Case No. 17-BK-3283- LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17- BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

LLC, and THE BANK OF NEW YORK MELLON,
as Fiscal Agent,

Defendants.

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,
as representative of PUERTO RICO HIGHWAYS
AND TRANSPORTATION AUTHORITY; THE
FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO as representative of
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Movants,

v.

AMERINATIONAL COMMUNITY SERVICES,
LLC, as Servicer for the GDB Debt Recovery
Authority and CANTOR-KATZ COLLATERAL
MONITOR LLC,

Respondents.

**[PROPOSED] ORDER GRANTING MOTION OF INTERVENING DEFENDANT
FINACIAL OVERSIGHT AND MANAGEMENT BOARD TO DISMISS, OR IN THE
ALTERNATIVE, TO STAY COUNTS I, II, AND IV OF THE COMPLAINT**

The Court, having considered the *Motion of Intervening Defendant Financial Oversight and Management Board to Dismiss, or in the Alternative, to Stay Counts I, II, and IV of the Complaint* (the “Motion”), filed by Intervening Defendant the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as sole Title III representative of Debtors the Commonwealth of Puerto Rico and the Puerto Rico Highways And Transportation Authority pursuant to Section 315(b) of the *Puerto Rico Oversight, Management, and Economic*

Stability Act, the Complaint of the DRA Parties⁶, joinders in the Motion by other defendants, the DRA Parties' opposition to the Motion, the Oversight Board's reply and any other defendants' joinder thereto, and any argument thereon, and good cause appearing therefore,

IT IS HEREBY ORDERED:

1. This Court has subject matter jurisdiction pursuant to PROMESA §§ 106(a) and 306(a)(2) because this adversary proceeding arises under PROMESA Title III and is related to the Commonwealth's Title III case.
2. Venue is appropriate in this District under PROMESA §§ 106(a) and 307, and 28 U.S.C. § 1391.
3. The Motion is granted and Counts I, II and IV of the Complaint are dismissed in their entirety, with prejudice and without leave to amend.

SO ORDERED.

Dated: August __, 2021

HONORABLE LAURA TAYLOR SWAIN
United States District Judge

⁶ The “DRA Parties” are AmeriNational Community Services, LLC, as servicer for the GDB Debt Recovery Authority (the “DRA”), and Cantor-Katz Collateral Monitor LLC, which serves as the collateral monitor for Wilmington Trust, N.A. in connection with the new bonds issued by the DRA.